

**IN THE UNITED STATE PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of: COEZ, Fabienne, et al.
For: METHOD FOR PROGRAMMING RESOURCE ACTIONS
IN A DOMESTIC COMMUNICATION NETWORK
Serial No. 09/719,182
Filed February 15, 2001
Art Unit 2484
Examiner ATALA, Jamie Jo
Attorney Docket No. PF980036
Confirmation No. 5225

APPEAL BRIEF

ON APPEAL FROM GROUP ART UNIT 2484

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Commissioner for Patents
P.O. Box 1450
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Sir:

This Appeal Brief is submitted both in support of the Notice of Appeal filed May 9, 2011 and in response to the final Office Action dated December 9, 2010. Please charge the fee for filing this Appeal Brief, and any other fees due in connection with this filing, to Deposit Account 07-0832.

TABLE OF CONTENTS

I.	REAL PARTY IN INTEREST	3
II.	RELATED APPEALS AND INTERFERENCES.....	3
III.	STATUS OF CLAIMS.....	3
IV.	STATUS OF AMENDMENTS.....	3
V.	SUMMARY OF CLAIMED SUBJECT MATTER.....	3
VI.	GROUND OF REJECTION TO BE REVIEWED ON APPEAL.....	6
VII.	ARGUMENT.....	7
VIII.	CLAIMS APPENDIX.....	15
IX.	EVIDENCE APPENDIX.....	19
X.	RELATED PROCEEDINGS APPENDIX.....	20

I. REAL PARTY IN INTEREST

The real party in interest is Thomson Licensing, the assignee of record.

II. RELATED APPEALS AND INTERFERENCES

Appellant is not aware of any pending appeals, judicial proceedings, or interferences which may be related to, directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

The status of the claims in the present application is as follows:

- a) Claims 1-21 are pending in this application, stand rejected in a final Office Action dated December 9, 2010, and are the subject of this appeal.
- b) Claims 1, 12, and 18 are the only independent claims.

IV. STATUS OF AMENDMENTS

The claims listed in Section VIII, Claims Appendix, of this Appeal Brief correspond to the claims as submitted in Appellant's captioned "*Amendment*" filed August 18, 2010, where claim amendments were submitted and entered. All amendments filed in this application have been entered and there are none pending.

V. SUMMARY OF CLAIMED SUBJECT MATTER

It should be explicitly noted that it is not Appellant's intention that the currently claimed or described embodiments be limited solely to operation within the illustrative embodiments identified below. Furthermore, citations to exemplary descriptions of illustrative embodiments are provided below in association with portions of the claims, which are related to the identified illustrative embodiments, entirely for compliance with, and in satisfaction of, the requirements for filing this appeal. There is no intention to read any further interpreted limitations into the claims as presented. Moreover, it will be appreciated that additional exemplary descriptions, though not cited herein, may be present in this patent application.

The claimed invention, as recited in claim 1, is directed to a process for programming actions of resources in a network of domestic devices (*specification at Fig. 1, page 5, lines 4-12, page 7, lines 34-page 8, lines 7, and page 10, lines 23-29*), including the steps of: sending a request for programming an action by a client application to a manager of preprogrammed actions of a device of the network (*specification at Fig. 2, page 10, lines 23-35*), the programming request including a set of parameters defining the action including a time indication and a list of resources involved in accomplishing the action (*specification at page 12, line 35-page 13, line 11*), verification by the actions manager that the resources involved in accomplishing the action will be available at a time when the action is to be carried out as specified by the time indication (*specification at page 11, line 36-page 12, line 4*), transmission to the client application of a message of acceptance or of refusal of the programming of the action on the part of the preprogrammed actions manager depending on the result of the verification (*specification at page 13, lines 33-36*).

The claimed invention, as recited in claim 12, is directed to a process for programming actions of resources in a network of domestic devices (*specification at Fig. 1, page 5, lines 4-12, page 7, lines 34-page 8, lines 7, and page 10, lines 23-29*), comprising the steps of: sending a request for programming an action by a client application to a manager of preprogrammed actions of a device of the network (*specification at Fig. 2, page 10, lines 23-35*), the programming request including a set of parameters defining the action including a time indication and a list of resources involved in accomplishing the action (*specification at page 12, line 35-page 13, line 11*), reception by the client application of a message of acceptance or of refusal of the programming of the action on the part of the preprogrammed actions manager depending on the result of a verification by the preprogrammed action manager that the resources involved in accomplishing the action will be available at a time when the action is to be carried out as specified by the time indication (*specification at page 11, line 36-page 12, line 4 and page 13, lines 33-36*).

The claimed invention, as recited in claim 18, is directed to a process for programming actions of resources in a network of domestic devices (*specification at Fig. 1, page 5, lines 4-12, page 7, lines 34-page 8, lines 7, and page 10, lines 23-29*), comprising the steps of: receiving, by a preprogrammed action manager of a network device, a request for programming an action sent by a

client application(*specification at Fig. 2, page 10, lines 23-35*), the programming request including a set of parameters defining the action including a time indication and a list of resources involved in accomplishing the action, sending to the client application (*specification at page 12, line 35-page 13, line 11*), by the preprogrammed action manager, a message of acceptance or of refusal of the programming of the action on the part of the preprogrammed actions manager depending on the result of a verification by the preprogrammed action manager that the resources involved in accomplishing the action will be available at a time when the action is to be carried out as specified by the time indication (*specification at page 11, line 36-page 12, line 4 and page 13, lines 33-36*).

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The ground of rejection for this application for which review is sought in this appeal is as follows:

1. Whether claims 1-21 are properly rejected by the USPTO under 35 U.S.C. §103(a) as being unpatentable over James (US 6108739) in view of Lynch (US6931430).

VII. ARGUMENT

1. CLAIMS 1-21 ARE PATENTABLY DISTINGUISHABLE UNDER 35 U.S.C. §103(A) OVER JAMES IN VIEW OF LYNCH.

A. Claim 1

Independent claim 1 recites:

Process for programming actions of resources in a network of domestic devices, including the steps of:

- sending a request for programming an action by a client application to a manager of preprogrammed actions of a device of the network, the programming request including a set of parameters defining the action including a time indication and a list of resources involved in accomplishing the action,

- verification by the actions manager that the resources involved in accomplishing the action will be available at a time when the action is to be carried out as specified by the time indication,

- transmission to the client application of a message of acceptance or of refusal of the programming of the action on the part of the preprogrammed actions manager depending on the result of the verification.

[Emphasis added].

The combination of references fails to teach or suggest all the features recited in claim 1

In rejecting claim 1, the Examiner acknowledges that James fails to disclose that the resources involved in accomplishing the action will be available at a time when the action is to be carried out as specified by the time indication. (See final Office Action, December 9, 2010, page 4, 2nd paragraph.). In order to cure this deficiency of James with respect to claim 1, the Examiner relies on the teachings of Lynch, specifically at column 9, lines 12-20, column 18, lines 22-67, and column 19, lines 5-36.

Appellant respectfully submits that Lynch does not teach or suggest the features of verification by the actions manager that the resources involved in accomplishing the action will be available at a time when the action is to be carried out as specified by the time indication.

Lynch, col. 9, lines 12-20, teaches a computer failure recovery technique involving a laptop computer. The laptop computer may not become available within a reasonable period of time.

When the availability of the laptop computer becomes known, a timer is set such that when it expires, the timer causes the relationship to the laptop computer to be severed.

The Examiner appears to reason that the teachings of setting a timer when the availability of the laptop computer becomes known and severing the relationship to the laptop computer upon expiration of the timer suggests the feature of verification that the resources will be available at a time when the action is to be carried out as specified by the time indication. Appellant respectfully disagrees with such interpretation.

Although Lynch, col. 9, lines 12-20, suggests setting a timer when a laptop computer is known to become available, Lynch does not specify a time indication as to when the laptop computer will be available. For example, Lynch's laptop computer may not become available within a reasonable period of time. Lynch's timer is set only when its availability becomes known. As such, Lynch logically does not suggest verifying that resources will be available at a time when the action is to be carried out as specified by the time indication.

Furthermore, setting a timer when a device becomes available is completely different from verifying that resources will be available at a time when the action is to be carried out as specified by the time indication. Therefore, this section of Lynch does not suggest the feature of verification by the actions manager that the resources involved in accomplishing the action will be available at a time when the action is to be carried out as specified by the time indication.

Lynch, col. 18, lines 22-67 teaches a method of recovering from a fault in operation. If the fault relates to the unavailability of an application, the system may simply retry the operations that resulted in the fault. However, if a more serious fault occurs, the system may require resynchronization wherein a reference state verification is determined and symbiotic partners select a checkpoint.

While Lynch, col. 18, lines 22-67 may suggest a method for fault recovery, nothing in such suggestion includes any discussion of, or specifies, any reference to a time indication. Furthermore, the Examiner does not rely on this portion of Lynch for suggesting the features of available at a time when the action is to be carried out as specified by the time indication.

Lynch, col. 19, lines 5-36, teaches determining a trusted partner based on a predetermined identity, the relative appropriateness of the partner over time, or such other indication, of which partner is most stable. This section of Lynch also teaches determining whether coherency exists

among the resources between symbiotic partners based on coherency indicia. Examples of coherency indicia include check sums, CRCs, and signatures and serve to characterize the coherency of the managed resources.

However, Lynch, col. 19, lines 5-36 does not specify a time indication as to when the symbiotic partner will be available. Furthermore, the Examiner does not rely on this section of Lynch for suggesting the features of available at a time when the action is to be carried out as specified by the time indication.

For at least the reasons set forth above, Appellant respectfully asserts that James and Lynch, separately and in combination, fail to teach or suggest “verification by the actions manager that the resources involved in accomplishing the action will be available at a time when the action is to be carried out as specified by the time indication” as recited in claim 1. Thus, it is submitted that the combination of James and Lynch does not teach, show, or suggest each and every limitation of claim 1.

No showing that one skilled in the art would have been motivated to combine James and Lynch

The Examiner, at the bottom of page 4 of the current final Office Action, simply provides a conclusory statement with regard to the reasons to combine the references. Appellant respectfully traverses this line of reasoning by the Examiner.

As pointed out by Lynch at Column 4, lines 45-64, the symbiotic computing system of Lynch includes a plurality of computers (e.g. laptop, desktop, wearable, and hand-held computers), whereby each of these computers couples to each other via communication links. A central computer system performs network management functions, managing the resources of each served client. Lynch at Column 3, lines 28-35 explains that symbiotic computing may be established in various types of network architecture or configuration, such as a client/server environment, a peer-to-peer environment, or an object oriented environment.

In contrast to Lynch, the multi-processor environment of James is established through the use of bus-like interconnects. (James, Column 3, lines 57-67). The computer systems of James are not established in client/server, peer-to-peer or object oriented environments, as in Lynch. No explanation at all is provided as to how the conclusion that Lynch’s method for managing resources in a network architecture would apply to James’ method of data transfers in multiprocessor computer

systems. There is no apparent reason why or how the combination of James and Lynch would provide any improvement over either system alone. Additionally, there is no indication given by the Examiner why there would be some expectation of successfully combining the references to arrive at Appellant's claimed invention.

An obviousness rejection under 35 USC § 103 over a combination of references must identify the motivation that *would* have led one skilled in the art to select particular elements of each reference and then combine those elements in the manner required to arrive at the claimed invention. Moreover, there must be some basis provided that would have led to an expectation of success. And, as noted above, the combined teaching of the cited art must suggest each and every limitation of the claim under evaluation.

The Examiner at the bottom of page 4 of the current final Office Action simply provides a conclusory statement that the motivation, in part, would be "in order to allow for proper managing of the systems resources." However, there are no factual findings as to how one of ordinary skill in the art would be lead to believe that combining James and Lynch would allow for "proper" managing of the system resources. There are no factual findings with regard to any indication of success and there are no factual findings as to any problem discussed in the references or known in the art which indicate such a combination suggests a "proper" managing of the system resources.

There is no apparent reason why or how this statement in the final Office Action would lead one to combine James and Lynch in any attempt to the claimed: verify by the actions manager that the resources involved in accomplishing the action will be available at a time when the action is to be carried out as specified by the time indication. Accordingly, Appellant submits that the Examiner has failed to provide sufficient showing as to why one skilled in the art would be motivated to combine the teachings of James and Lynch in the manner suggested.

A system or method comprising one or more known elements is not rendered obvious simply by establishing that the element was known in the art – it must be shown that there was a reason or motivation that would have led one skilled in the art to combine those elements in the manner claimed. (*See, e.g., KSR International Co. v. Teleflex Inc.* 127 S.Ct. 1727, 1740-41 (2007); *Ex parte Whalen II*, Appeal No. 2007- 4423, 2008 WL 2957928 (BPAI July 23, 2008) (expanded panel; precedential opinion)). Furthermore, when carrying out the underlying analysis, it must be noted that

rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness (*KSR* 127 S.Ct. at 1740-41, citing *In re Kahn* 441 F.3d 977, 988 (Fed. Cir. 2006)).

The Examiner's conclusory statement does not meet the requirements under the MPEP and the KSR decision. While the proper inquiry for motivation is not limited to the overly rigid teaching suggestion motivation (TSM) test the Examiner cannot simply leapfrog over the requirements using a conclusory statement. As pointed out in the recently issued updated Examiner Guidelines it remains Office policy that appropriate factual findings are required in order to apply the enumerated rationales properly. The Examiner has not made the necessary factual findings and associated reasoning that are crucial to a proper obviousness determination according to the instructions provided in the MPEP.

For all the reasons provided above, Appellant therefore submits that independent claim 1, and the claims that depend therefrom, are patentably distinguishable over the combination of James and Lynch. Accordingly, Appellant respectfully requests that the Board reverse this rejection of claim 1 under 35 USC §103(a) over James and Lynch.

B. Claim 12

Independent claim 12 recites:

Process for programming actions of resources in a network of domestic devices, comprising the steps of:

sending a request for programming an action by a client application to a manager of preprogrammed actions of a device of the network, the programming request including a set of parameters defining the action including a time indication and a list of resources involved in accomplishing the action,

reception by the client application of a message of acceptance or of refusal of the programming of the action on the part of the preprogrammed actions manager depending on the result of a verification by the preprogrammed action manager that the resources involved in accomplishing the action will be available at a time when the action is to be carried out as specified by the time indication.

Claim 12 includes limitations similar in nature to those discussed above with respect to claim 1. Claim 12 calls for “reception by the client application of a message of acceptance or of refusal of the programming of the action on the part of the preprogrammed actions manager depending on the result of a verification by the preprogrammed action manager that the resources involved in accomplishing the action will be available at a time when the action is to be carried out as specified by the time indication.”

Appellant applies the arguments from claim 1 above to claim 12 according to claim 12’s specific interpretation. For all the reasons set forth hereinabove, it is believed that certain elements of claim 12 are not taught, shown, or suggested by James and Lynch, either separately or in combination. Thus, it is submitted that claim 12, and the claims that depend therefrom, are also allowable under 35 U.S.C. §103. It is respectfully requested that the Board reverse this rejection of claim 12.

C. Claim 18

Independent claim 18 recites:

Process for programming actions of resources in a network of domestic devices, comprising the steps of:

receiving, by a preprogrammed action manager of a network device, a request for programming an action sent by a client application, the programming request including a set of parameters defining the action including a time indication and a list of resources involved in accomplishing the action,

sending to the client application, by the preprogrammed action manager, a message of acceptance or of refusal of the programming of the action on the part of the preprogrammed actions manager depending on the result of a verification by the preprogrammed action manager that the resources involved in accomplishing the action will be available at a time when the action is to be carried out as specified by the time indication.

Claim 18 includes limitations similar in nature to those discussed above with respect to claim 1. Claim 18 calls for “sending to the client application, by the preprogrammed action manager, a message of acceptance or of refusal of the programming of the action on the part of the preprogrammed actions manager depending on the result of a verification by the preprogrammed

action manager that the resources involved in accomplishing the action will be available at a time when the action is to be carried out as specified by the time indication.”

Appellant applies the arguments from claim 1 above to claim 18 according to claim 18’s specific interpretation. For all the reasons set forth hereinabove, it is believed that the elements of claim 18 are not taught, shown, or suggested by James and Lynch, either separately or in combination. Thus, it is submitted that claim 18, and the claims that depend therefrom, are also allowable under 35 U.S.C. §103. It is respectfully requested that the Board reverse this rejection of claim 18.

D. Dependent Claims 2-11, 13-17, and 19-21

Claims 2-11 depend from claim 1, claims 13-17 depend from claim 12, and claims 19-21 depend from claim 18. Each dependent claim includes all the features of its respective independent parent claim including all the particular features discussed immediately above. In view of this dependence, Appellant applies the above arguments from the respective independent claim to each of dependent claims 2-11, 13-17, and 19-21. Thus, it is submitted that claims 2-11, 13-17, and 19-21 are allowable at least by virtue of their dependency from an allowable independent parent claim and because each claim recites further distinguishing features thereover. It is respectfully requested the Board reverse the rejection of dependent claims 2-11, 13-17, and 19-21.

Conclusion

In light of these remarks, it is submitted that claims 1-21 would not have been obvious to a person of ordinary skill in the art upon a reading of the combination of James and Lynch. Therefore, it is believed that claims 1-21 are allowable under 35 U.S.C. §103. It is respectfully requested that the Board of Patent Appeals and Interferences reverse the rejection of claims 1-21.

Respectfully submitted,

Date: 7/8/11

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VIII. CLAIMS APPENDIX

1. (Previously Presented) Process for programming actions of resources in a network of domestic devices, including the steps of:

- sending a request for programming an action by a client application to a manager of preprogrammed actions of a device of the network, the programming request including a set of parameters defining the action including a time indication and a list of resources involved in accomplishing the action,
- verification by the actions manager that the resources involved in accomplishing the action will be available at a time when the action is to be carried out as specified by the time indication,
- transmission to the client application of a message of acceptance or of refusal of the programming of the action on the part of the preprogrammed actions manager depending on the result of the verification.

2. (Original) Process according to Claim 1, wherein the client application selects a preprogrammed action manager situated in a device other than the client application itself.

3. (Previously Presented) Process according to Claim 1, further including the step of storage by each resource involved of its timetable with respect to the action.

4. (Previously Presented) Process according to Claim 1, wherein the verification step comprises sending a request, by the preprogrammed actions manager, to each resource involved, for ascertaining the availability of the resources involved in view of their respective reservation timetables.

5. (Previously Presented) Process according to Claim 9, wherein, at the time specified in the request, the preprogrammed actions manager performs the following tasks:

- reservation of the resources involved;
- establishment of the requested connections between the resources involved;
- instigating of the commands with the resources involved.

6. (Original) Process according to claim 1, wherein the request comprises a start time of the action.

7. (Original) Process according to claim 1, wherein the request comprises an end time of the action.

8. (Original) Process according to claim 1, wherein the request comprises a data item identifying a periodicity of the action.

9. (Original) Process according to claim 1, wherein the request comprises a list of connections to be established before the action is initiated.

10. (Original) Process according to claim 1, wherein the verification step comprises the step of sending, to a device control manager of a given resource listed in the request, action parameters corresponding to the resource, wherein the device control manager acts as an intermediary between the preprogrammed actions manager and the given resource.

11. (Original) Process according to claim 1, further comprising the step of providing an identifier of an action by the preprogrammed action manager to the requesting application in case the action is accepted.

12. (Previously Presented) Process for programming actions of resources in a network of domestic devices, comprising the steps of:

sending a request for programming an action by a client application to a manager of preprogrammed actions of a device of the network, the programming request including a set of parameters defining the action including a time indication and a list of resources involved in accomplishing the action,

reception by the client application of a message of acceptance or of refusal of the

programming of the action on the part of the preprogrammed actions manager depending on the result of a verification by the preprogrammed action manager that the resources involved in accomplishing the action will be available at a time when the action is to be carried out as specified by the time indication.

13. (Original) Process according to Claim 12, wherein the client application selects a preprogrammed action manager situated in a device other than the client application itself.

14. (Original) Process according to claim 12, wherein the request comprises a start time of the action.

15. (Original) Process according to claim 12, wherein the request comprises an end time of the action.

16. (Original) Process according to claim 12, wherein the request comprises a data item identifying a periodicity of the action.

17. (Original) Process according to claim 12, wherein the request comprises a list of connections to be established before the action is initiated.

18. (Previously Presented) Process for programming actions of resources in a network of domestic devices, comprising the steps of:

receiving, by a preprogrammed action manager of a network device, a request for programming an action sent by a client application, the programming request including a set of parameters defining the action including a time indication and a list of resources involved in accomplishing the action,

sending to the client application, by the preprogrammed action manager, a message of acceptance or of refusal of the programming of the action on the part of the preprogrammed actions manager depending on the result of a verification by the preprogrammed action manager that the resources involved in accomplishing the action will be available at a time when the action is to be

carried out as specified by the time indication.

19. (Original) Process according to Claim 18, wherein the verification step comprises sending a request, by the preprogrammed actions manager, to each resource involved, for ascertaining the availability of the resources involved in view of their respective reservation timetables.

20. (Original) Process according to claim 18, wherein the verification step comprises the step of sending, to a device control manager of a given resource listed in the request, action parameters corresponding to the resource, wherein the device control manager acts as an intermediary between the preprogrammed actions manager and the given resource.

21. (Original) Process according to claim 18, further comprising the step of providing an identifier of an action by the preprogrammed action manager to the requesting application in case the action is accepted.

IX. EVIDENCE APPENDIX

No evidence has been submitted pursuant to §§ **1.130**, **1.131**, or **1.132** of this title. No other evidence has been entered by the Examiner and/or relied upon by Appellant in this appeal, at this time.

X. RELATED PROCEEDINGS APPENDIX

Appellant is not aware of any appeals or interferences related to the present application.